IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5772 OF 2005

Siddharth Enterprises .. Petitioner

Vs.

Additional Collector and
Competent Authority, Thane
and Anr. ..Respondent

Mr.Anil Singh i/b Mr.Sandesh D.Patil for the petitioner

Mr.A.A.Kumbhkoni with Mr.A.H.Palekar for the respondent

CORAM : S.U.KAMDAR, J
DATED : 14TH DECEMBER, 2005

P.C.:

1. By the present petition, the impugned order dt.5.7.05 is challenged. The primary ground of challenge is pursuant to the remand made by this court by order dt.10.9.04 the authority has not considered the dispute as to the fixation of the price in respect of the flat to be handed over to the Government. It is the case of the petitioner that the price fixed of Rs.355 per sq.mtr is not sufficient and the revised rate of Rs.650 per sq.mtr should be fixed. Simultaneously, the petitioner also found additional representations

pursuant to said order of the Division Bench dt.10.9.04 and also challenged the levy of sum of Rs.2,35,62,710/- which has been due and payable by the petitioner to the respondent. The said amount is payable towards the conversion and development of the reservation component of the said land which was declared as a reserved land under the provisions of Urban Land (Ceiling and Regulation) Act 1976. For the purpose of development of land, an application was made for exemption under section 20 of the ULC Act. By the said application, the petitioner was permitted to develop the land on the various terms and conditions on which exemption is granted. It is not in dispute that one of the terms and conditions under the exemption permission granted by the State Government was to hand over 29 tenements to the State Government duly constructed on the said plot of land. It is also not in dispute that the said 29 tenements has not been handed over till date. The said permission under section 20 of the ULC Act has been granted far back as 16.9.93 and by taking benefit of the said exemption permission property is constructed and the flats are sold to the various third parties and

the petitioner builder has made profits by selling the said flats after taking benefit of the exemption notification. When it comes to complying with the obligation contained therein, petitioner is not willing to comply with the said terms and conditions including the 29 tenements to be handed over by the petitioner to the Government. In the impugned order the Chief Secretary, Urban Development Department of the State Government has held that the petitioner is in breach of the condition of the said exemption notification of handing over 29 tenements. It has been also held that the petitioner is not paying the amount of Rs.2,35,62,710 as found due and payable by the petitioner but at the same time seeking to enhance the price of the tenements to be handed over from Rs.355 to Rs.650 per sq.mtr.

2. I am of the opinion that the petitioner has taken benefit of the said exemption permission under section 20 of the ULC Act and is now refusing to comply with the obligations stipulated therein and at the same time contrary to terms of the said permission he is seeking enhancement of the rate

towards cost of construction of the said flats. In my view petitioner who is not abiding to the terms and conditions after having exploited benefits thereof in full is not entitled to any reliefs in writ jurisdiction under Article 226 and 227 of the Constitution of India. Even today the learned counsel for the petitioner makes a statement that his client is not inclined to hand over the 29 tenements pursuant to the exemption notification. In the facts of the circumstances of the case that the petitioner is not inclined to hand over the tenements itself, the question of fixing the rate or enhanced rate does not arise. In my opinion, the present petition cannot be entertained in the light of the conduct on the part of the petitioner herein and the petition is accordingly dismissed. Petitioner is directed to pay costs quantified at Rs.10,000/- to the State Government. It is made clear that the State Government will be at liberty to initiate appropriate proceedings for the recovery of the said defaulted amount as well as the said tenements as per the exemption permission granted by the State and utilised by the petitioner.